BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

TERRY L. DOTSON	}
VS.	
MIDWEST GRAIN PRODUCTS, INC. Respondent Self-Insured) Docket No. 179,806
AND	{
KANSAS WORKERS COMPENSATION FUND	}

ORDER

Respondent appeals from a post-award preliminary hearing Order of November 27, 1995, wherein Special Administrative Law Judge William F. Morrisey granted claimant a vocational rehabilitation evaluation referral.

ISSUES

- (1)
- Whether claimant suffered personal injury arising out of and in the course of his employment on February 12, 1993. Whether notice was provided to the respondent of the alleged injury pursuant to K.S.A. 44-520 and, if not, whether respondent was prejudiced by this lack of notice. Whether a vocational rehabilitation assessment can be ordered in a post-award preliminary hearing pursuant to K.S.A. 44-534a. (2)
- (3)
- post-award preliminary hearing pursuant to K.S.A. 44-534a. Whether a vocational rehabilitation assessment can be ordered post-(4) award with no change in circumstance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

The Award in this matter was issued by Special Administrative Law Judge William F. Morrisey on April 3, 1995, and was then appealed to the Appeals Board. The matter was argued September 20, 1995 before the Appeals Board with the Appeals Board's decision being rendered December 12, 1995. In that Order the Appeals Board, in reversing the Administrative Law Judge, found claimant had failed to prove by a preponderance of the credible evidence that he suffered personal injury by accident arising out of and in the course of his employment with respondent, on the date alleged.

The Appeals Board, in finding claimant had failed to prove by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent, denied claimant all benefits under the Workers

IT IS SO OPPEDED

Compensation Act. As such, the Order by the Special Administrative Law Judge for a vocational rehabilitation evaluation referral should be set aside and held for naught.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Special Administrative Law Judge William F. Morrisey dated November 27, 1995, shall be, and is hereby, set aside and held for naught and claimant is denied his request for a referral for a vocational rehabilitation evaluation, having failed to prove by a preponderance of the credible evidence that he suffered personal injury by accident arising out of and in the course of his employment with respondent on the date alleged.

	II IS SO CREEKED.
	Dated this day of January 1996.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER
:	James C. Wright, Topeka, KS

c: James C. Wright, Topeka, KS John B. Rathmel, Overland Park, KS Bruce A Brumley, Topeka, KS William F. Morrissey, Special Administrative Law Judge Philip S. Harness, Director